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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,647	01/16/2004	Gregory Lynch	P-124656.1 (UTI)	8072

7590 02/01/2005  
Daniel D. Chapman  
Ste. 2100  
112 E. Pecan St.  
San Antonio, TX 78205

EXAMINER
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GUTMAN, HILARY L

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 02/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/759,647	Applicant(s) LYNCH, GREGORY	
	Examiner Hilary Gutman	Art Unit 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6, 7, 10-12, 16, 17 and 20 is/are rejected.
- 7) ☒ Claim(s) 3-5, 8, 9, 13-15, 18 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/12/04</u> . | 6) <input type="checkbox"/> Other: ____  |

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## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because:

In Figure 1 the lead line for reference number “36” is not pointing at the mounting pin.

In Figure 2B the reference numbers “14” and “24” should be deleted from “14/16” and from “24/26” since this representation appears to be directed solely at “16” and “26”.

In Figure 10 the lead line for reference number “26A” does not appear to be pointing at the material.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 10 and "A".

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 38 (Figures 1-1A).

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Specification*

4. The disclosure is objected to because of the following informalities: on page 6, line 3, “fame” should be “frame”. Appropriate correction is required.
5. The use of the trademark “Saran Wrap” has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

6. The abstract of the disclosure is objected to because the first “sentence” is not a complete sentence. Correction is required. See MPEP § 608.01(b).

*Claim Objections*

7. Claims 1 and 20 are objected to because of the following informalities:  
In claim 1, on line 10, “material” should perhaps be “members” to refer back to line 6.  
In claim 20, line 2, “net” should perhaps be either “a net” or “nets”.  
Appropriate correction is required.

*Claim Rejections - 35 USC § 102*

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-2, 6-7, 10-12, 16-17, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Faber et al.

Faber et al. (6,715,973) disclose a device for use in at least partially enclosing articles stacked on the bed of a vehicle, the device comprising: a frame 20 for engagement with the vehicle; a pair of arms 60, 60' (Figure 1) for pivoting engagement with the frame, the pair of arms moveable from a non-dispensing position (Figure 1) to a dispensing position (Figure 4); a pair of flexible sheet members 130, 130'; and a pair of rollers (Figure 2B) for rotatable engagement with the pair of arms, each of the pair of rollers adapted to receive the flexible sheet members, the rollers for rotational attachment to the arms, the rollers capable of dispensing the flexible sheet material when the arms are in the dispensing position.

With regard to claim 2, an arm operating mechanism (inherent, such as a driver or user of the vehicle) for movement of the pair of arms between the dispensing and the non-dispensing position is also provided.

With regard to claim 6, the pair of flexible sheet members are comprised of netting such as a mesh.

With regard to claim 7, the sheet members removably attach at a trailing edge thereof to the rollers.

With regard to claim 10, the pair of arms are cylindrical and the rollers are cylindrical.

For claim 11, Faber et al. ('973) disclose a device for use in at least partially enclosing articles stacked on the bed of a vehicle, the device comprising: a first arm 60 in operative

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engagement with the vehicle, the first arm moveable between a use (Figure 4) and a non-use position (Figure 1); a first roller (Figure 2B) for rotatable engagement with the arm; and a first flexible sheet-like member 130 for engagement with the roller.

With regard to claim 12, the first arm is capable of laying substantially flush with a side of the bed of the vehicle when in the non-use position.

With regard to claim 16, the flexible sheet-like member is comprised of net.

With regard to claim 17, the device further includes a second arm 60', a second roller and a second flexible sheet-like member 130'.

With regard to claim 20, the flexible sheet-like members are comprised of nets.

With regard to the limitation that the devices of claims 1 and 11 are used "for" a flatbed trailer, it should be noted that a recitation of the intended use of a claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. With regard to the subcombination devices of claims 1 and 11, it is envisioned that the devices of Faber et al. can be capable of use on a flatbed trailer and therefore meet that limitations of the claims as broadly recited and interpreted.

#### ***Allowable Subject Matter***

10. Claims 3-5, 8-9, 13-15, and 18-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

13. **Any response to this action should be mailed to:**


Assistant Commissioner for Patents  
Washington, D.C. 20231

**or faxed to:**

(703) 872-9326, (for formal communications intended for entry)

**or:**

(703) 746-3515, (for informal or draft communications, please clearly label "PROPOSED" or "DRAFT").

  
Hilary Gutman  
January 27, 2005